



1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

3 Appellant: Gorkem I. Ates

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7 Examiner: Hai V. Nguyen

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BRIEF ON APPEAL

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18 Sir:

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19 Appellant appeals from the final rejection of pending claims 1-6 and
20 files the instant Brief on Appeal in triplicate. Accordingly attached
21 herewith please find Agent's Check No.: 7093 pra drawn on CHEMICAL BANK
22 in the amount of \$220.00 to cover the required fee for submission of
23 applicant's brief on appeal and a petition for one month extension until
24 March 4, 2004 a small entity statement having been filed with the original
25 application.

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RESPECTFULLY SUBMITTED

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By the 17th century, common law began being written down from judges, deciding actual cases, based on decisions of the past, and came to be dubbed "decisional law" or "case law." Common law looks to the past, evolving new rules by adapting old ones.

"A very common phenomenon, and one very familiar to the student of history, is this. The customs, beliefs, or needs of a primitive time establish a rule or a formula. In the course of centuries the custom, belief, or necessity disappears, but the rule remains."

Common law is judge-made law. Each time a case is decided, it is added to the folk law that is the common law. The important decisions are relied upon and serve as precedents that are used to decide future cases.

Precedent is the soul of common law. It exists as folk law, passed on from written decision to written decision, much as our tribal ancestors passed on knowledge by word of mouth. It is this decisional law that appellant relies upon in support of his arguments presented, *infra*, in the instant Brief On Appeal.

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13 In practice, the client requests a file or document from the main
14 server (a streaming video and/or audio file is typical).

25 The main server, acting like an orchestra chief, requests the
26 participant to send the document client requested to the client packet-by-
27 packet, labeling each packet with the senders IP address being the main
28 servers IP address. This enables the client, which has a port open only
29 for a main server's address to accept the packets (the file). To
30 accomplish this goal, the main server examines the IP address port of the
31 packet. Then takes action as:

1 1. If the port of the specific client's socket does not have a
2 correspondence in the database (determined after a "SELECT" SQL
3 statement), which means that the client has just started a
4 connection with a SYN packet. Then this client socket is stored in
5 the database with four variables: IP address, port number, and TCP
6 state along with a timestamp for the socket; and
7 2. If the IP and port are present in the database as an active
8 connection (a connection that is transferring data or in a wait
9 state but not terminated), then the timestamp of the socket is
10 updated with the current time of the arrival of the latest packet.
11 The purpose of the timestamp is for a background thread in the main
12 server to clean the obsolete (closed) socket entries in the database. The
13 background thread does this by subtracting the timestamp from the current
14 time and comparing this value with a defined (by the main server
15 programmer or administrator) timeout value. If the timeout value is
16 exceeded then the database entry is deleted. This means that the socket is
17 indeed broken.
18 After that, the packet is modified. The source IP and port of the
19 packet are preserved. The destination IP and port of the packet are
20 changed to the listening IP and the port of the participant is selected as
21 being geographically closest and with the best free resources in terms of
22 CPU usage, volatile and non-volatile memory, and bandwidth.
23 The participant server processes the request as if it was directly
24 requested by the client since the participant does not know from the IP
25 packet that it was routed from the main server and thinks that the packet
26 actually comes from the client since the packet has the source IP of the
27 client. The participant sends the requested object with the sender's
28 address (source IP) of the main server's IP address at the IP level. This
29 may require root privileges under Linux. Other requirements may apply to
30 other systems.

1 When the client makes another request using the main server's IP
2 address, the client requesting packages are routed to the main server, NOT
3 to the participant server. This is the "normal behavior" of today's
4 networking equipment (i.e. routers) and software.

5 In live stream and the participant does not have the file requested,
6 than the file is first downloaded to the participant and than sent to the
7 clients. In the lack of multicasting this will distribute the load of the
8 main server to the participant servers and thus would save costs because
9 adding participant servers would be relatively easy and cheap to add than
10 clustering more servers to the main server.

11 The present invention:

- 12 1. Provides the advantages of multicasting such as low server and
13 bandwidth costs but without multicasting supporting hardware.
- 14 2. Is fast and flexible - the number of participants can be changed
15 dynamically with little cost compared to upgrading the main server.
- 16 3. Is not difficult to implement.
- 17 4. Relies on the fact that multicasting equipment is expensive and
18 ISP's are reluctant to upgrade and unless most of the net is
19 equipped with multicasting machines, multicasting won't operate
20 efficiently.
- 21 5. Participants are safe in the network against attacks such as denial
22 of service attacks because their IP addresses are not revealed to
23 the clients, and thus hackers.

24 In operation, a main server is established. A participant Internet
25 surfer enters username, password, and other necessary information required
26 for financial processing to a form in a web page of the website of the
27 present invention. When a participant user decides to become active in
28 the system, it will surf to the website and enter his username, password.
29 The participant's computer will then load an applet (possibly written in
30 ActiveX or Java in 1999 terms) that will be the server software of the
31 "participant" (participant is the participating web surfer or company

1 computer). The applet will first calculate the participants CPU,
2 bandwidth, and memory power (and other necessary resources) and will start
3 a timer for the participant to start serving under rule of the main
4 server. Information about the participant will be recorded on a database
5 in the main server (main server may be any machine with at least one IP
6 address connected to the Internet backbone). When a web surfer requests
7 a file, the main server will search through its database of servers and
8 select the most appropriate server in terms of serving ability depending
9 on its previous evaluation of participants. The main server will command
10 the participant, via the open listening socket of the applet loaded in the
11 participant's machine, to serve the client. When the participant server
12 decides to go offline, the main server calculates the amount earned by the
13 participant Internet user and records it. At the end of a period,
14 participant person will get his money by check. The main server will have
15 the computing power of the net efficiently, cheaply, and dynamically at
16 its fingerprints. The main server will be the powerhouse between ISPs.

1 (1) REAL PARTY IN INTEREST

2 The party identified in the caption of the instant brief is the real
3 party in interest pursuant to 37 CFR 1.192(c)(1).

4 (2) RELATED APPEALS AND INTERFERENCES

5 There are no appeals or interferences known to applicant's legal
6 representative or assignee which will directly affect or be directly
7 affected by or have a bearing on the Board's decision in pending appeals
8 pursuant to 37 CFR 1.192(c)(2).

9 (3) STATUS OF CLAIMS

10 Claims 1-6 now pending in the application have been finally rejected
11 and are on appeal. No claims have been cancelled.

12 (4) STATUS OF AMENDMENTS

13 No amendment has been filed subsequent to the final rejection.

14 (5) SUMMARY OF INVENTION

15 Claim 1, the only independent apparatus claim on files, defines:

- 16 1. An Internet system (20)[Figure 2], comprising:
17 a) a main server (22) for storing information (24) to be
18 requested over the Internet (26) by a client (28) so as to
19 form a request for information (30) and having an IP address
20 (32)[page 17, lines 2-8]; and
21 b) at least one participant server (34) having an IP address (36)
22 and electrically communicating with said main server (22)[page
23 17, lines 9-11]; said at least one participant server (34) not
24 receiving the request for information (30) from the client
25 (28), but rather said main server (22) receiving the request
26 for information (30) over the Internet (26) from the client
27 (28) and requesting over the Internet (26) that said at least

1 one participant server (34) send the requested information
2 (30) over the Internet (26) back to the client (28)[page 17,
3 lines 12-17], and if said at least one participant server (34)
4 does not have the requested information (30), the requested
5 information (30) is downloaded from said main server (22) to
6 said at least one participant server (34)[page 17, lines 17-
7 21], and when said at least one participant server (34) sends
8 the requested information (24) over the Internet (26) back to
9 the client (28), said at least one participant server (34)
10 assigns to the requested information (24) said IP address (32)
11 of said main server (22) and not said IP address (36) of said
12 at least one participant server (34)[page 17, line 22 to page
13 18, line 2].

14 Claim 2, the first dependent apparatus claim on file, defines:

15 2. The system as defined in claim 1, wherein said main server (22) is
16 a TCP/IP server and assign jobs to said at least one participant
17 server (34) dynamically without relocating the client (28) using
18 neither HTTP nor HTML commands so as to take relocating process away
19 from top networking OSI layers to 3rd level of Internet working OSI
20 that is IP so as to enable starting downloading of the requested
21 information (24) from one of said at least one participant servers
22 (34) and finishing the downloading from another of said at least one
23 participant server (34) without ever noticing server alteration by
24 virtue of said at least one participant server (34) assigning to the
25 requested information (24) said IP address (32) of said main server
26 (22) and not said IP address (36) of said at least one participant
27 server (34)[page 18, lines 3-11].

28 Claim 3, the second dependent apparatus claim on file, defines:

29 3. The system as defined in claim 2, wherein said top networking OSI is
30 at least one of TCP, HTTP, and application level [page 18, lines 12-
31 12].

1 Claim 4, the only independent method claim on file, defines:
2 4. A method for using an Internet system (20), comprising the steps of
3 [Figures 3A-3D]:
4 a) making a request for information (30), over the Internet (26),
5 by a client (28), to a main server (22) of the Internet system
6 (20) and not to said at least one participant server (34)[page
7 18, lines 17-19][Figure 3A];
8 b) examining an IP address (38) of the client (28), by said main
9 server (22)[page 18, lines 23-24][Figure 3A];
10 c) seeking at least one participant server (34) of the Internet
11 system (20), by said main server (22), so as to form an at
12 least one nearest participant server (40)[page 18, lines 1-
13 3][Figure 3B];
14 d) requesting over the Internet (26), by said main server (22)
15 acting like an orchestra leader, that said at least one
16 nearest participant server (40) send the requested information
17 (24) to the client (28), packet-by-packet, over the Internet
18 (26)[page 19, lines 4-8][Figure 3B];
19 e) determining if said at least one nearest participant server
20 (40) has the requested information (24)[page 19, lines 9-
21 10][Figure 3B];
22 f) labeling, by said at least one nearest participant server
23 (40), each packet with an IP address (32) of said main server
24 (22), which enables the client (28) which has a port open only
25 for main server addresses to accept said packets, if answer to
26 step e) is yes [page 18, lines 11-15][Figure 3C];
27 g) sending the requested information (24) with said IP address
28 (32) of said main server (22), by said at least one nearest
29 participant server (40), to the client (28), over the Internet
30 (26)[Figure 3D];

- 1 h) downloading the requested information (24) from said main
2 server (22) to said at least one nearest participant server
3 (40), which will distribute the load of said main server (22)
4 to said at least one participant server (40) when lacking
5 multicasting so as to save costs, by virtue of said at least
6 one participant server (40) being relatively easy and
7 inexpensive to add as compared to clustering more servers to
8 said main server (22), if answer to STEP 5 is no [page 19,
9 line 20 to page 20, line 3][Figure 3C]; and
10 i) returning to step f) [page 20, line 4][Figure 3C].
11 Claim 5, the first dependent method claim on file, defines:
12 5. The method as defined in claim 4, wherein said step of making a
13 request for information (30), over the Internet (26), by the client
14 (28), from the main server (22) includes making the request for at
15 least one of a streaming video and an audio, over the Internet (26),
16 by the client (28), from the main server (22)[page 20, lines 5-9].
17 Claim 6, the second dependent method claim on file, defines:
18 6. The method as defined in claim 4, wherein said step of seeking the
19 nearest at least one participant server (34), by said main server
20 (22), so as to form an at least one nearest participant server (40)
21 includes seeking the nearest at least one nearest participant server
22 (34), by said main server (22), so as to form said at least one
23 nearest participant server (40) that has the most bandwidth and CPU
24 and other serving requirements needed to furnish the requested
25 information (24) to the client (28) [page 20, lines 10-16].

26 (6) ISSUES

27 ISSUE I

28 Whether claims 1-6 are unpatentable under 35 U.S.C. 103(a) over
29 Brendel et al. in view of Leighton et al.

1 (7) GROUPING OF CLAIMS

2 The claims on appeal do not stand or fall together and are
3 separately patentable.

4 (8) ARGUMENT

5 ISSUE I

6 Whether claims 1-6 are unpatentable under 35 U.S.C. 103(a) over
7 Brendel et al. in view of Leighton et al.

8 Appellant respectfully draws the Examiner's attention to the fact
9 that the Federal Circuit holds that relevant case law must be relied upon
10 in determining obviousness ipso facto the determination of obviousness is
11 a matter of law, as was decided in In re Deuel, 51 F.3d 1552, 1557, 34
12 USPQ.2d (BNA) 1210, 1214 (Fed. Cir. 1995), where the Court held:

13 "Obviousness is a question of law,
14 which we review de novo, though
15 factual findings underlying the
16 Board's obviousness determination are
17 reviewed for clear error. In re
18 Vaeck, 947 F.2d 488, 493, 20 USPQ2d
19 1438, 1442 (Fed. Cir. 1991); In re
20 Woodruff, 919 F.2d 1575, 1577, 16
21 USPQ2d 1934, 1935 (Fed. Cir. 1990)."
22 [at 1214][Emphasis added]

23 And, in Richardson-Vicks Inc. v. The Upjohn Co., 122 F.3d 1476, 44
24 USPQ.2d 1181 (Fed. Cir. 1997), where the Court held:

25 "The difficulty with RVI's position
26 is that, although the argument has
27 merit when the issue is purely one of
28 fact, it does not follow when the
29 issue involves a question of law. It
30 is black letter law that the ultimate
31 question of obviousness is a question
32 of law. "See Graham v. Deere Co.,
33 383 U.S. 1, 17, 148 USPQ 459, 467
34 (1966) (citing Great A. & P. Tea Co.
35 v. Supermarket Equip. Co., 340 U.S.
36 147, 155, 87 USPQ 303, 309 (1950));
37 In re Donaldson Co., 16 F.3d 1189,
38 1192, 29 USPQ2d 1845, 1848 (Fed. Cir.

1 1994) (en banc); Texas Instruments
2 Inc. v. United States Int'l Trade
3 Comm'n, 988 F.2d 1165, 1178, 26
4 USPQ2d 1018, 1028 (Fed. Cir. 1993).
5 And we review that legal question
6 without deference to the trial court.
7 See Gardner V. TEC Sys. Inc., 725
8 F.2d 1338, 1344, 220 USPQ 777, 782
9 (Fed. Cir. 1984) (district court's
10 conclusion on obviousness "is one of
11 law and subject to full and
12 independent review in this
13 court"). "[at 1183][Emphasis added]

14 In the seminal case of Graham v. John Deere Co., 383 U.S. 1, 17, 148
15 USPQ 459, 467, 15 L.Ed. 2d 545, 86 S. Ct. 684 (1966), the Supreme Court
16 articulated the requirements for a prima facie holding of obviousness.
17 The Patent Office has since set forth in MPEP 706.02 a three step
18 requirement for establishing a prima facie case of obviousness.

19 The first step requires that the Examiner must set forth the
20 differences in the claim over the applied references. The second step
21 requires that the Examiner must set forth the proposed modification of the
22 reference which would be necessary to arrive at the claimed subject
23 matter. And, the third step requires that the Examiner must explain why
24 the proposed modification would be obvious.

25 The Courts require that in order to satisfy the third step for
26 establishing a prima facie case of obviousness, the Examiner must identify
27 where the prior art provides a motivating suggestion to make the
28 modifications proposed in the second step for establishing a prima facie
29 case of obviousness, as was expressed in the 1992 Federal Circuit Court
30 decision in In re Jones, 958, F.2d 347, 21 USPQ.2d 1941, where the Court
31 held:

32 "Contention that one skilled in the
33 herbicidal art would have been
34 motivated to use, with acid commonly
35 known as "dicamba," substituted
36 ammonium salt such as that disclosed

1 in two prior references does not
2 warrant holding that claimed
3 substituted ammonium salt of dicamba
4 for use as herbicide is prima facie
5 obvious, since there is no suggestion
6 for combining disclosures of those
7 references either in references
8 themselves, which are directed to
9 shampoo additives and production of
10 morpholine, respectively, or in
11 knowledge generally available to
12 those skilled in the art."[at
13 1941][Emphasis added]

14 "The Solicitor points out that, given
15 the breadth of forms of dicamba (free
16 acid, ester, or salt) disclosed by
17 Richter as having herbicidal utility,
18 one of ordinary skill in the art
19 would appreciate that the dicamba
20 group has significance with respect
21 to imparting herbicidal activity to
22 dicamba compounds. Thus, the
23 solicitor contends, one skilled in
24 the art would have been motivated to
25 uses, with dicamba, substituted
26 ammonium salts made from a known
27 amine, such as the amine disclosed by
28 Zorayan and Wideman, and would have
29 expected such a salt to have
30 herbicidal activity. Before the PTO
31 may combine the disclosures of two or
32 more prior art references in order to
33 establish prima facie obviousness,
34 there must be some suggestion for
35 doing so, found either in the
36 references themselves or in the
37 knowledge generally available to one
38 of ordinary skill in the art." In re
39 Fine, 837 F.2d 1071, 1074, 5 USPQ2d
40 1596, 1598-99 (Fed. Cir. 1988). We
41 see no such suggestion in Zorayan,
42 which is directed to shampoo
43 additives, nor Wideman, which teaches
44 that the amine used to make the
45 claimed compound is a byproduct of

1 the production of morpholine. Nor
2 does the board disclosure of Richter
3 fill the gap, for the reasons
4 discussed above."[at 1943][Emphasis
5 added]

6 And, in Arkie Lures, Inc. v. Gene Larew Tackle, Inc., 912 F.Supp.
7 422, 38 USPQ.2d 1300 (W.D.Ark. 1996), where the Court held:

8 "The existence of separate elements
9 of the invention in the prior art is
10 insufficient to establish
11 obviousness, absent some teaching or
12 suggestion in the prior art to
13 combine the elements."[Emphasis
14 added]

15 And, in Gambro Lundia AB v. Baxter Healthcare Corporation, 110 F.3d
16 1573, 42 USPQ.2d 1378 (Fed. Cir. 1997), where the court held:

17 "Without a suggestion or teaching to
18 combine, a case of obviousness is
19 deficient."[Emphasis added]

20 The Courts further require, however, that even if the prior art may
21 be modified as suggested by the Examiner, the modification is not made
22 obvious unless the prior art suggests the desirability of the
23 modification, as was expressed in the 1992 Federal Circuit Court decision
24 in In re Fritch, 922, F.2d 1260, 23 USPQ.2d 1780, where the Court held:

25 "Mere fact that prior art may be
26 modified to reflect features of
27 claimed invention does not make
28 modification, and hence claimed
29 invention, obvious unless
30 desirability of such modification is
31 suggested by prior art"[at
32 1780][Emphasis added]

33 "The mere fact that the prior art may
34 be modified in the manner suggested
35 by the Examiner does not make the
36 modification obvious unless the prior
37 art suggested the desirability of the
38 modification. In re Gordon, 733 F.2d

1 at 902, 221 USPQ at 1127."[at
2 1783][Emphasis added]

3 And further, the Fritch Court at 1783, held that the patent
4 applicant may attack the Examiner's prima facie determination as
5 improperly made out and tending to support a conclusion of nonobviousness:

6 "In proceedings before the Patent and
7 Trademark Office, the Examiner bears
8 the burden of establishing a prima
9 facie case of obviousness based upon
10 the prior art...[The Examiner] can
11 satisfy this burden only by showing
12 some objective teaching in the prior
13 art or that knowledge generally
14 available to one of ordinary skill in
15 the art would lead to that individual
16 to combine the relevant teachings of
17 the references. The patent applicant
18 may then attack the Examiner's prima
19 facie determination as improperly
20 made out, or the applicant may
21 present objective evidence tending to
22 support a conclusion of
23 nonobviousness." [Emphasis added]

24 In this same regard, the Examiner's attention is respectfully drawn
25 to the decisions in Heidelberger Druckmaschinen AG v. Hantscho Commercial
26 Products, Inc., 21 F.3d 1068, 30 USPQ.2d 1377; In re Fine, 837 F.2d 1071,
27 5 USPQ.2d 1596 (Fed. Cir. 1988); In re Keller, 642 F.2d 413, 208 USPQ 871
28 (CCPA 1981); and In re Merck & Co., Inc., 800 F.2d 1091, 231 USPQ 375
29 (Fed. Cir. 1986).

30 In properly applying the Graham v. John Deere Co. test in light of,
31 inter alia, In re Jones, and In re Fritch discussed supra, the Examiner
32 must conduct a rigorous examination and analysis of the prior art. It
33 would appear that the Examiner has not done so.

34 Neither Brendel et al., Leighton et al., nor for that matter any of
35 the references cited by the Examiner, make any motivating suggestion that,
36 inter alia the teachings of Brendel et al. can be incorporated with the
37 teachings of Leighton et al., as suggested by the Examiner.

1 The Examiner has merely combined elements in a piecemeal manner in
2 light of appellant's disclosure to show obviousness by using appellant's
3 own specification as though it were prior art and in doing so has violated
4 the basic mandate inherent in 35 U.S.C. 103, as was decided in In re Kamm
5 and Young, 17 USPQ 298 ff, where the Court held:

6 "The rejection here runs afoul of a
7 basic mandate inherent in section 103
8 - that a piecemeal reconstruction of
9 the prior art patents in the light of
10 appellants' disclosure shall not be
11 the basis for a holding of
12 obviousness." [Emphasis added]

13 And, in In re Stephens, Wenzl, and Browne, 145 USPQ 656 (CCPA 1965),
14 where the Court reversed a rejection on a combination of references and
15 held:

16 "References may not be combined
17 indiscriminately and with guidance
18 from applicant's disclosure to show
19 that the claims are unpatentable." [at
20 656] [Emphasis added]

21 "In our consideration of the record
22 in light of appellants' arguments, we
23 find nothing which demonstrates that
24 the examiner and the board erred in
25 rejecting the claims. While we agree
26 with appellants that references may
27 not be combined indiscriminately and
28 with guidance from appellants'
29 disclosure to show that claims are
30 unpatentable, we think the
31 combination of references her is
32 proper and adequately suggests the
33 structure appellants have
34 achieved." [at 657] [Emphasis added]

35 And, in Panduit Corp. v. Burndy Corporation et al., 180 USPQ 498
36 (District Court, N.D. Illinois, E. Div.), where the Court held:

37 "Inquiry into the patentability must
38 be directed toward subject matter as
39 a whole and not to elements of a

1 combination and their individual
2 novelty; combination which results in
3 a more facile, economical, or
4 efficient unit, or which provides
5 results unachieved by prior art
6 structures, cannot be anticipated
7 piecemeal by showing that elements
8 are individually old." [at
9 498] [Emphasis added]

10 "The inquiry into the patentability
11 must be directed toward the subject
12 matter as a whole and not to the
13 elements of the claimed combination
14 and their individual novelty, and
15 therefore a patented combination
16 which results in a more facile,
17 economical or efficient unit, or
18 which provides results unachieved by
19 prior art structures, cannot be
20 anticipated piecemeal by showing that
21 the various elements of the invention
22 are individually old.
23 The difference between the subject
24 matter set forth in the Re. 26,492
25 patent and the subject matter of the
26 cited prior art references as a whole
27 would not have been obvious at the
28 time the invention was made to a
29 person of ordinary skill in the art
30 to which such subject matter
31 pertains, under 35 U.S.C. 103. [at
32 505] [Emphasis added]

33 And, in Monarch Knitting Mach. Corp. v. Sulzer Morat GmbH, 139 F.3d
34 877, 45 USPQ.2d 1977 (Fed. Cir. 1998), where the Court held:

35 "Federal district court's formulation
36 of problem confronting inventors of
37 needles for automatic knitting
38 machine presumes their solution to
39 problem, namely modification of "stem
40 segment" of needles; defining problem
41 in terms of its solution reveals
42 improper hindsight in selection of
43 prior art relevant to obviousness,

1 resulted in district court adopting
2 overly narrow view of scope of prior
3 art, and infected district court's
4 determinations about content of prior
5 art." [at 1978][Emphasis added]

6 "To ascertain the scope of the prior
7 art, a court examines "the field of
8 the inventor's endeavor,"
9 Shatterproof Glass Corp. v. Libbey-
10 Owens Ford Co., 758 F.2d 613, 620,
11 225 USPQ 634, 628 (Fed. Cir. 1985),
12 and "the particular problem with
13 which the inventor was involved,"
14 Stratoflex, Inc. v. Aerquip Corp.,
15 713 F.2d 1530, 1535, 218 USPQ 871,
16 876 (Fed. Cir. 1983) (quoting In re
17 Wood 599 F.2d 1032, 1036, 202 USPQ
18 171, 174 (CCPA 1979)), at the "time
19 the invention was made," see 35
20 U.S.C. 8 103(a). The district court
21 defined the problem as "designing the
22 stem segment of a knitting
23 needle...[to] minimize[] needle head
24 breakage and thus maximize[] the
25 operating speed of an industrial
26 knitting machine." (emphasis added).
27 The '053 patent, on the other hand,
28 describes the inventor's problem as
29 "providing [knitting needles] with a
30 means which avoids head breakages or
31 lets [breakages] start to an extent
32 worth mentioning only at higher
33 knitting speeds." '053 patent, col.
34 1, lines 48-51. The district court's
35 formulation of the problem
36 confronting the '053 inventors
37 presumes the solution to the problem
38 - modification of the stem segment.
39 defining the problem in terms of its
40 solution reveals improper hindsight
41 in the selection of the prior art
42 relevant to obviousness. See, e.g.
43 In re Antle, 444 F.2d 1168, 1171-72,
44 170 USPQ 285, 287-88 (CCPA 1971)
45 (warning against selection of prior

1 art with hindsight). By importing
2 the ultimate solution into the
3 problem facing the inventors, the
4 district court adopted an overly
5 narrow view of the scope of the prior
6 art. It also infected the district
7 court's determinations about the
8 content of the prior art."[at
9 1981][Emphasis added]

10 And, in In re Rouffet, 149 F.3d 1350, 47 USPQ.2d 1453 (Fed. Cir.
11 1998), where the Court reversed the Board's decision in which the level of
12 skill in the art being high was not sufficient to supply motivation:

13 "Three possible sources for
14 motivation to combine prior art
15 references in manner that would
16 render claimed invention obvious are
17 nature of problem to be solved,
18 teachings of prior art, and knowledge
19 of persons of ordinary skill in art;
20 high level of skill in field of art
21 cannot be relied upon to provide
22 necessary motivation absent
23 explanation of what specific
24 understanding or technical principle,
25 within knowledge one of ordinary
26 skill in art, would have suggested
27 combination, since if such rote
28 invocation could suffice to supply
29 motivation to combine, more
30 sophisticated scientific fields would
31 rarely, if ever, experience
32 patentable technical advance."[at
33 1453][Emphasis added]

34 "Claimed low orbit satellite
35 communication system for mobile
36 terminals is not prima facie obvious
37 over combination of two prior art
38 references, even though person
39 possessing high level of skill
40 characteristic of this field would
41 know to account for differences
42 between claimed invention and prior
43 art combination, since high level of

1 skill in art, without more, cannot
2 supply required motivation to combine
3 references, and does not overcome
4 absence of any actual suggestion to
5 combine; obviousness rejection will
6 not be upheld, even where skill in
7 art is high, absent specific
8 identification of principle, known to
9 one of ordinary skill, that suggests
10 claimed combination."[at 1454]
11 [Emphasis added]

12 Pursuant to 37 CFR 1.111(c), claims 1 and 4 define the following
13 advantageous distinctive features, that distinguish over, and avoid, the
14 prior art:

15 a) "...said main server... requesting
16 over the Internet that said at least
17 one participant server send the
18 requested information over the
19 Internet back to the client..."[claim
20 1][Emphasis added];

21 b) "requesting over the Internet, by
22 said main server acting like an
23 orchestra leader, that said at least
24 one nearest participant server send
25 the requested information over the
26 Internet back to the client..."[claim
27 4][Emphasis added];

28 It was decided in In re Miller, 169 USPQ 597 (CCPA 1971) that each
29 and every limitation must be met in determining patentability:

30 "All words in a claim must be
31 considered in judging the
32 patentability of that claim against
33 the prior art."[at 600][Emphasis
34 added]

35 In this same regard, the Examiner's attention is respectfully
36 directed to the decisions in In re Fuetterer, 138 USPQ 217 (CCPA 1963);
37 and In re Ludke and Sloan, 169 USPQ 563 (CCPA 1971).

38 When the Internet system of the present invention is designed in
39 accordance with the advantageous distinctive features of claims 1 and 4

1 discussed supra, inter alia the at least one participant server can be
2 located anywhere in the world regardless of where in the world the main
3 server is located ipso facto "...said main server... requesting over the
4 Internet that said at least one participant server send the requested
5 information over the Internet back to the client..."[claim 1][Emphasis
6 added] and "requesting over the Internet, by said main server acting like
7 an orchestra leader, that said at least one nearest participant server
8 send the requested information over the Internet back to the
9 client..."[claim 4][Emphasis added].

10 Even though the advantageous features of the present invention
11 discussed supra may not have been disclosed and discussed specifically in
12 the specification of the patent application as it was originally filed,
13 they still must be relied upon as evidence of patentability, as was
14 decided in In re Chu, 66 F.3d 292, 36 USPQ.2d 1089 (Fed. Cir. 1995), where
15 the Court held:

16 "Board of Patent Appeals and
17 Interferences erred, in upholding
18 obviousness rejection of applicant's
19 claims, by concluding that claims'
20 disclosure was matter of "design
21 choice," and that the applicant's
22 evidence and arguments to contrary
23 are not present in specification and
24 are therefore unpersuasive, since
25 board is required to consider
26 totality of record and is not free to
27 disregard evidence and arguments
28 presented by applicants, and since
29 there is no support for proposition
30 that evidence and/or arguments
31 traversing 35 USC 103 rejection must
32 be contained within specification,
33 given that obviousness is determined
34 by totality of record including, in
35 some instances most significantly,
36 evidence and arguments proffered
37 during give-and-take of ex parte

1 patent prosecution."[at 1090]
2 [Emphasis added]

3 "Because the Board was required to
4 consider the totality of the record,
5 the Board was not free to disregard
6 the evidence and arguments presented
7 by Chu in response to the obviousness
8 rejection. Additionally, the Board
9 erred in apparently requiring Chu's
10 evidence and arguments responsive to
11 the obviousness rejection to be
12 within his specification in order to
13 be considered. To require Chu to
14 include evidence and arguments in the
15 specification regarding whether
16 placement of the SCR catalyst in the
17 bag retainer was a matter of "design
18 choice" would be to require patent
19 applicants to divine the rejections
20 the PTO will proffer when patent
21 applications are filed." [at
22 1094][Emphasis added]

23 "We have found no cases supporting
24 the position that a patent
25 applicant's evidence and/or arguments
26 traversing a § 103 rejection must be
27 contained within the specification.
28 There is no logical support for such
29 a proposition as well, given that
30 obviousness is determined by the
31 totality of the record including, in
32 some instances, most significantly,
33 the evidence and arguments proffered
34 during the give-and-take of ex parte
35 patent prosecution."[at 1095]
36 [Emphasis added]

37 And, even though the present invention may be considered simple and
38 accomplishes only a small but genuine improvement by some is not
39 sufficient reason to deny it patent protection, as was decided in Schnell
40 et al. v. The Allbright-Nell Company et al., 146 USPQ 322 (Court of
41 Appeals, Seventh Circuit 1965), where the Court held:

1 "Device seems simple and obvious in
2 light of patentee's teaching, but it
3 evidently was not obvious at time of
4 invention; those working in the field
5 did not accomplish patentee's
6 results; that fact supports
7 conclusion that patentee achieved
8 patentable invention." [at
9 322][Emphasis added]

10 "This now seems simple and obvious in
11 the light of the Schnell teaching,
12 but is was evidently not at all
13 obvious at the time of the invention.
14 Those working in the field did not
15 accomplish Schnell's results. That
16 fact supports the conclusion that
17 Schnell achieved patentable
18 inventions. Pyle Nat. Co. v. Lewin,
19 7 Cir., 1937, 92 F.2d 628, 630, 35
20 USPQ 40, 42." [at 324] [Emphasis
21 added]

22 The Board of Appeals expressed the same concept when it held in Ex
23 parte Grasenick and Gessner, 158 USPQ 624 (Patent Office Board of Appeals
24 1967), that:

25 "Improvement over prior art, even
26 though it be simple or involves only
27 a reversing of certain parts, is
28 patentable unless prior art shows
29 that improvement is obvious." [at 624]
30 [Emphasis added]

31 "This rejection is in error. An
32 improvement over the prior art, even
33 though it be simple or involves only
34 a reversing of certain parts, is
35 patentable unless the prior art shows
36 the improvement to be obvious. The
37 examiner has neither cited evidence
38 establishing the obviousness of
39 appellant's modification of the prior
40 art nor demonstrated that the
41 improved results claimed by
42 appellants are not available from

1 their construction."[at 624]
2 [Emphasis added]

3 Attention is also respectfully directed in this regard to the
4 decisions in Mercantile National Bank of Chicago et al v. Quest, Inc. et
5 al. DC., N.D. Indiana, 166 USPQ 517; In re Shelby, 136 USPQ 220; and In re
6 Irani and Moedritzer, 166 USPQ 24, which all indicate that simplicity does
7 not operate as a bar to patentability if the invention was unobvious at
8 the time it was made.

9 Turning now to the references, and with regard to advantageous
10 distinctive features a) and b) of claims 1 and 4, respectively, discussed
11 supra, Brendel et al. do not teach "...said main server... requesting over
12 the Internet that said at least one participant server send the requested
13 information over the Internet back to the client..."[claim 1][Emphasis
14 added], and, "requesting over the Internet, by said main server acting
15 like an orchestra leader, that said at least one nearest participant
16 server send the requested information over the Internet back to the
17 client..."[claim 4][Emphasis added], but rather teach that the main server
18 communicates with the at least one participant server over a discrete
19 and/or distinct and/or dedicated connection not the Internet, even though
20 the Examiner feels that the "Internet" is equivalent to a "WAN" as stated
21 at pages 11, paragraph 1, line 2 and at page 12, paragraph 3, line 2 of
22 the last Office Action where the Examiner states:

23 "...over the Internet is equivalent
24 to over Wide Area Network."[Emphasis
25 added]

26 Applicant respectfully submits that a WAN is not equivalent to the
27 Internet.

28 A WAN (Wide Area Network) is a network which can be utilized over
29 relatively long distances, quite often between buildings and some times
30 transmitted over telephone lines or with a satellite transmission system.
31 Protocol can be what ever is agreed upon. Some common protocols include
32 TCP/IP, NetBEUI, IPX/SPX-compatible Protocol, WAN support for ATM, ATM

1 Call Manager, etc. The Internet, however, only permits TCP/IP protocol,
2 and is the largest WAN of all. Therefore, even though the Internet is a
3 WAN, a WAN is not necessarily the Internet. There is no reciprocity
4 between A WAN and the Internet. The Internet is not equivalent to Wide
5 Area Network.

6 Paper 18A: Support for assertion that the Internet is not equivalent
7 to a Wide Area Network can be found in the declaration of Gary J. Levanti
8 under 37 CFR 1.68 in lieu of affidavit under 35 CFR 1.132 traversing
9 grounds of rejection by distinguishing Internet is not equivalent to Wide
10 Area Network from each other submitted herewith in support thereof.

11 Further support for this assertion can be found in In re Gosteli,
12 872 F.2d 1008, 10 USPQ.2d 1614 (Fed. Cir. 1989), where the Court held:

13 "...species rejects genera, but the
14 converse is not necessarily so."
15 [Emphasis added]

16 In applying the decision of the Gosteli Court, it is revealed that
17 a WAN is a genus which cannot rejected the specie of the Internet.

18 With this arrangement of Brendel et al., the server 52 cannot be
19 located anywhere in the world regardless of where in the world the load
20 balancer 70 is located ipso facto the load balancer 70 communicates with
21 the server 52 over the discrete and/or distinct and/or dedicated
22 connection 120.

23 Additionally, Brendel et al. disclose at col. 20, lines 34-37:

24 "The web farm has been
25 described as having a
26 "local" network, but
27 this local network could
28 be local only in the
29 sense that it is not the
30 Internet backbone."

31 Brendel at al. teach communicating between the scheduler and the
32 server with a proprietary (OSI 3rd level) protocol called IXP.

1 In contradistinction, the present invention teaches communicating
2 with the participants (the equivalent of web servers in Brendel et al.)
3 from the main server (the scheduler) with the standard IP (Internet
4 Protocol) protocol so that the present invention can reside where there is
5 no specialized frame relay or ISDN or leased line communication between
6 the scheduler and the participant and when there is only a standard
7 Internet connection that is using the Internet backbone, which Brendel et
8 al. simply cannot do.

9 As can be seen, Brendel et al. teaches away from the present
10 invention, a fact that must be considered in determining obviousness, as
11 was decided in General Tire and Rubber Co. v. Firestone Tire and Rubber
12 Co., 174 USPQ at 445, where the Court held:

13 "In assessing the prior art, the
14 Court must have regard for all of the
15 signposts contained in it. It must
16 consider the passages and references
17 which point away from the invention
18 as well as those said to point toward
19 it..." [Emphasis added]"

20 To properly apply the decisional law of General Tire and Rubber Co.
21 v. Firestone Tire and Rubber Co., one must first define what is considered
22 "teaching away." The definition of "teaching away" was succinctly
23 expressed in United States v. Adams, 383 U.S. 39, 52, 148 USPQ 479,484, 15
24 L.Ed.2D 572, 86 S.Ct. 708 (1966); and W.L. Gore & Assoc., v. Garlock,
25 Inc., 721 F.2d 1540, 1550-51, 220 USPQ 303, 311 (Fed. Cir. 1983), cert.
26 denied, 469 U.S. 851 (1984), where the Court held:

27 "a reference teaches away if it
28 suggests that the line of development
29 flowing from the reference's
30 disclosure is unlikely to be
31 productive of the result sought by
32 the applicant."[Emphasis added]

33 The connection between the load balancer and the server of Brendel
34 et al. being through a discrete and/or distinct and/or dedicated

1 connection that is independent of the Internet results in the servers not
2 being able to be located anywhere in the world regardless of where in the
3 world the load balancer is located and is therefore non-productive in
4 producing the connection between the main server and the at least one
5 participant server of the present invention being through the Internet
6 which results in the at least one participant server being able to be
7 located anywhere in the world regardless of where in the world the main
8 server is located. Therefore, pursuant to W.L. Gore & Assoc., v. Garlock,
9 Inc. discussed supra, Brendel et al. teach away from the present
10 invention.

11 Brendel et al. would therefore lead a reader in a path divergent
12 from the path that was taken by appellant and therefore "teaches away"
13 from the present invention and can not be used to create a prima facie
14 case of obviousness, as was decided in In re Gurley, 27 F.3d 551, 31, 31
15 USPQ.2d at 1130 (Fed. Cir. 1994), where the Court held:

16 "a reference may be said to teach
17 away when a person of ordinary skill,
18 upon reading the reference would be
19 led in a direction divergent from the
20 path that was taken by the applicant
21 ...a reference that "teaches away"
22 can not create a prima facie case of
23 obviousness." [Emphasis added]

24 The signposts of Brendel et al. that teach away from the present
25 invention must be considered in creating a holding of obviousness, as
26 required by General Tire and Rubber Co. v. Firestone Tire and Rubber Co.,
27 United States v. Adams, W.L. Gore & Assoc., v. Garlock, Inc., and In re
28 Gurley discussed supra which when analyzed will clearly indicate that the
29 Examiner's combination is improper.

30 Appellant has provided clear and convincing evidence that neither
31 Brendel et al., Leighton et al., nor for that matter any of the references
32 cited by the Examiner, accomplish appellant's result of providing an
33 efficient Internet system that, inter alia enables the at least one

1 participant server to be located anywhere in the world regardless of where
2 in the world the main server is located.

3 Therefore a holding of obviousness cannot be made out, as was
4 decided by the Board of Appeals in Ex parte Tanaka, Marushima and
5 Takahashi, 174 USPQ 38, where the Board held:

6 "Claims are not rejected on the
7 ground that it would be obvious to
8 one of ordinary skill in the art if
9 the prior art devices do not
10 accomplish applicant's
11 result."[Emphasis added]

12 And, in In re Wright, 122 USPQ 522 (1959), where the Court held:

13 "...the mere aggregation of old
14 elements that did not perform a
15 different function is not a
16 patentable invention, but that a
17 novel combination of old elements
18 which cooperate with each other to
19 produce a new or useful result or a
20 substantial increase in efficiency is
21 patentable."[Emphasis added]

22 And, further in the en banc decision in In re Dillon, 919 F.2d 688,
23 692 (Fed. Cir. 1990), where the Court held:

24 "...a prima facie case of obviousness
25 requires that the prior art suggest
26 the claimed compositions' properties
27 and the problem the applicant
28 attempts to solve."[Emphasis added]

29 In this same regard, the Examiner's attention is respectfully
30 directed to the decisions in In re Halleck, 164 USPQ 647 (CCPA 1970); and
31 Kockum Industries, Inc. v. Salem Equipment, Inc., 175 USPQ 81 (9th Cir.
32 1972).

33 In light of, inter alia In re Deuel, Richardson-Vicks Inc. v. The
34 Upjohn Co., the Graham v. John Deere Co. test in light of, inter alia MPEP
35 706.02, In re Jones, Arkie Lures, Inc. v. Gene Larew Tackle, Inc., Gambro
36 Lundia AB v. Baxter Healthcare Corporation, In re Fritch, Heidelberger

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2 Keller, and In re Merck & Co., Inc., In re Kamm and Young, In re Stephens,
3 Wenzl, and Browne, Panduit Corp. v. Burndy Corporation et al., Monarch
4 Knitting Mach. Corp. v. Sulzer Morat GmbH, In re Rouffet, In re Miller, In
5 re Fuetterer, In re Ludke and Sloan, In re Chu, Schnell et al. v. The
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9 Rubber Co., United States v. Adams, W.L. Gore & Assoc., v. Garlock, Inc.,
10 In re Gurley, Ex parte Tanaka, Marushima and Takahashi, In re Wright, In
11 re Dillon, In re Halleck, and Kockum Industries, Inc. v. Salem Equipment,
12 Inc. discussed supra, pursuant to In re Fritch discussed supra appellant
13 attacks the Examiner's prima facie determination as being improperly made
14 out and tending to support a conclusion of nonobviousness.

15 In view of the arguments presented supra, appellant respectfully
16 submits that the Examiner's grounds for the Examiner's rejection of claims
17 1-6 under 35 U.S.C. 103(a) over Brendel et al. in view of Leighton et al.
18 are no longer applicable and appellant therefore respectfully requests
19 that the Board reverse this rejection.

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17	1995)	12, 29
18	In re Dillon, 919 F.2d 688, 692 (Fed. Cir. 1990)	29, 30
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20	In re Fritch, 922, F.2d 1260, 23 USPQ.2d 1780	15, 29
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22	In re Gurley, 27 F.3d 551, 31, 31 USPQ.2d at 1130 (Fed. Cir. 1994)	28,
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26	In re Jones, 958, F.2d 347, 21 USPQ.2d 1941	13, 29
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- 2 U.S. Patent Number 5,774,660 to Brendel et al.
- 3 U.S. Patent Number 5,923,854 to Bell et al.

APPENDIX

- 1
- 2 1. An Internet system, comprising:
- 3 a) a main server for storing information to be requested over the
- 4 Internet by a client so as to form a request for information
- 5 and having an IP address; and
- 6 b) at least one participant server having an IP address and
- 7 electrically communicating with said main server; said at
- 8 least one participant server not receiving the request for
- 9 information from the client, but rather said main server
- 10 receiving the request for information over the Internet from
- 11 the client and requesting over the Internet that said at least
- 12 one participant server send the requested information over the
- 13 Internet back to the client, and if said at least one
- 14 participant server does not have the requested information,
- 15 the requested information is downloaded from said main server
- 16 to said at least one participant server, and when said at
- 17 least one participant server sends the requested information
- 18 over the Internet back to the client, said at least one
- 19 participant server assigns to the requested information said
- 20 IP address of said main server and not said IP address of said
- 21 at least one participant server.
- 22 2. The system as defined in claim 1, wherein said main server is a
- 23 TCP/IP server and assign jobs to said at least one participant
- 24 server dynamically without relocating the client using neither HTTP
- 25 nor HTML commands so as to take relocating process away from top
- 26 networking OSI layers to 3rd level of Internet working OSI that is
- 27 IP so as to enable starting downloading of the requested information
- 28 from one of said at least one participant servers and finishing the
- 29 downloading from another of said at least one participant server

1 without ever noticing server alteration by virtue of said at least
2 one participant server assigning to the requested information said
3 IP address of said main server and not said IP address of said at
4 least one participant server.

5 3. The system as defined in claim 2, wherein said top networking OSI is
6 at least one of TCP, HTTP, and application level.

7 4. A method for using an Internet system, comprising the steps of:
8 a) making a request for information, over the Internet, by a
9 client, to a main server of the Internet system and not to
10 said at least one participant server;
11 b) examining an IP address of the client, by said main server;
12 c) seeking at least one participant server of the Internet
13 system, by said main server, so as to form an at least one
14 nearest participant server;
15 d) requesting over the Internet, by said main server acting like
16 an orchestra leader, that said at least one nearest
17 participant server send the requested information to the
18 client, packet-by-packet, over the Internet;
19 e) determining if said at least one nearest participant server
20 has the requested information;
21 f) labeling, by said at least one nearest participant server,
22 each packet with an IP address of said main server, which
23 enables the client which has a port open only for main server
24 addresses to accept said packets, if answer to step e) is yes;
25 g) sending the requested information with said IP address of said
26 main server, by said at least one nearest participant server,
27 to the client, over the Internet;
28 h) downloading the requested information from said main server to
29 said at least one nearest participant server, which will

1 distribute the load of said main server to said at least one
2 participant server when lacking multicasting so as to save
3 costs, by virtue of said at least one participant server being
4 relatively easy and inexpensive to add as compared to
5 clustering more servers to said main server, if answer to STEP
6 5 is no; and
7 i) returning to step f).

8 5. The method as defined in claim 4, wherein said step of making a
9 request for information, over the Internet, by the client, from the
10 main server includes making the request for at least one of a
11 streaming video and an audio, over the Internet, by the client, from
12 the main server.

13 6. The method as defined in claim 4, wherein said step of seeking the
14 nearest at least one participant server, by said main server, so as
15 to form an at least one nearest participant server includes seeking
16 the nearest at least one nearest participant server, by said main
17 server, so as to form said at least one nearest participant server
18 that has the most bandwidth and CPU and other serving requirements
19 needed to furnish the requested information to the client.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Invention: INTERNET SYSTEM

Examiner: Nguyen, H

Agent's Doc. No.: ATEG21A

**DECLARATION OF GARY J. LEVANTI UNDER 37 CFR § 1.68 IN LIEU
OF AFFIDAVIT UNDER 37 CFR § 1.132 TRAVERSING GROUNDS OF
REJECTION BY DISTINGUISHING BETWEEN A WAN AND THE INTERNET**

I, Gary J. Levanti, declare and say:

1. I am not a party to the application.

EDUCATION

2. I received an M.B.A. from Binghamton University, Binghamton, NY 13902 in January 1992.
3. I received a B.A. from Binghamton University, Binghamton, NY 13902 in May 1989.

WORK EXPERIENCE

4. I have been an adjunct professor from September 2002 to the present at the State University of New York at Stony Brook, NY, teaching BUS110 (Business in the 21st Century).
5. BUS110 covers many general business topics.
6. BUS110 consists of group work, weekly written assignments, oral, and PowerPoint presentations.
7. BUS110 gives students practical applications and course work to help build their understanding of the class materials.

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8. I have been an adjunct professor from September 2002 to the present at Polytechnic University Melville, NY, teaching MG-770 (Entrepreneurship and New Venture Creation).
 9. During teaching MG-770, I created open forum that fostered out of the box discussions.
 10. During teaching MG-770, I gave research project and reading assignments based on class motivations and interest, while maintaining core curriculum.
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11. I have been a consultant from September 2001 to the present at G J L, Greenlawn, NY.
 12. While at G J L, I worked on computer networking, systems integration and troubleshooting, custom marketing, advertising, web and e-commerce development projects, sales, PR, and tradeshow development, management, and support.
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13. I have been an Adjunct Professor from January 2001 to May 2001 and from January 2003 to the present at the State University of New York, Farmingdale, NY, teaching BUS 232 (Electronic Commerce).
14. I assisted in the creation of BUS 232.
15. BUS 232 included topics related to the traditional business models in the Internet environment with emphasis on cryptography, SSL, HTML, client/server relationship, LAN, WAN, Intranet, and extranet networks.
16. During teaching BUS 232, I developed lesson plans and assignments needed to instruct students and then test their understanding.
17. During teaching BUS 232, I encouraged class discussion individually and in groups.

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18. I was Vice President Marketing from July 2000 to September 2001 at Media Solutions Hostcentric, Inc., New York, NY.
 19. At Media Solutions Hostcentric, Inc., I was involved in strategy, development, marketing and management of multiple web properties.
 20. At Media Solutions Hostcentric, Inc., I renegotiated Internet advertising contracts and saved company in excess of \$1.75 million.
 21. At Media Solutions Hostcentric, Inc., I negotiated distribution contract with large consumer software manufacturer, with a projected income of \$1.25 million.
 22. At Media Solutions Hostcentric, Inc., I negotiated other advertising resulting in over \$300,000 savings.
 23. At Media Solutions Hostcentric, Inc., I had full responsibility for marketing, staffing and business development for a web hosting corporation.
 24. At Media Solutions Hostcentric, Inc., I was responsible for strategic planning, public relations, product development and positioning, presentations, partner negotiations, direct marketing, internet marketing, advertising (domestic and international), marketing deliverables, business to business and consumer, internal communications, project management, problem resolution, corporate integration, digital rights management, broadband satellite and terrestrial delivery products, Web Caching, Web Hosting, corporate conferencing, live and on-demand Internet video and consumer level Internet video distribution products, research and development of new product offerings that leveraged core competencies.
 25. At Media Solutions Hostcentric, Inc., I directed all aspects of trade shows including Internet World, Streaming Media, and DV Web Video.

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26. At Media Solutions Hostcentric, Inc., I Managed marketing staff at local division and enterprise locations in the US.

27. I was an Adjunct Professor from January 1997 to May 1998 at Queensborough Community College, City University of New York, Queens, NY teaching BU-201 Business Organization and Management and BU-401 Elements of Marketing.

28. I taught traditional business and marketing principles with additional support and instruction in computer use, e-mail, and Internet research skills through lesson specific URL's and workshops prior to class upon students request.

29. I was Vice President of Internet Marketing and Business Development from June 1998 to July 2000 at Interstate National Dealer Services, Inc., Uniondale, NY.

27. At Internet Marketing and Business Development I was involved in project management and start-up of multiple Internet properties.

28. At Internet Marketing and Business Development I negotiated a \$9 million dollar agreement, while other multi-million dollar agreements were pending.

29. At Internet Marketing and Business Development I saved more than \$120,000 in content costs through partnering agreement.

30. At Internet Marketing and Business Development I Publicly traded NASDAQ - ISTN - Managed, staffed and directed automotive website project from concept to implementation. www.InterstateAutomall.com launched at

National Automotive Dealers Association (NADA) in San Francisco, 2/99.

31. At Internet Marketing and Business Development I was responsible for site content, promotion, revenue generation, partnership agreements and relationships, advertising, traffic generation and tracking, front-end and back-end specifications, vendor requirements, MIS department resource integration and recommendations, national advertising collateral and trade show promotion.
32. At Internet Marketing and Business Development I was involved in strategic and future opportunities including WAP, opt-in email, and development of traffic ownership programs.
33. At Internet Marketing and Business Development I directed staff in administration and content support, sales support, and market research.
34. At Internet Marketing and Business Development I was responsible for integration and ongoing product development on www.WarrantyDirect.com. Site offered extended automobile warranties through the web.
35. At Internet Marketing and Business Development I implemented marketing strategy to brand on and off the web.
36. At Internet Marketing and Business Development I established affiliate network.
37. At Internet Marketing and Business Development I initiated business development in RV, motorcycle and personal watercraft.
38. At Internet Marketing and Business Development I was responsible for www.UautoBid.com overall marketing strategy and implementation of national branding campaign (consumer and business to business) and integrated all aspects of marketing including: online/offline advertising, product personality, promotions, direct

marketing campaigns, public relations and collateral with soft-launch city (targeting based on inventories) and maintenance of site, media planning, direct campaigns, negotiating placement and purchases.

39. At Internet Marketing and Business Development I coordinated PR campaigns and trade shows including staffing, advertising, logistics, and talent acquisition for events.
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40. I was Marketing Director from October 1997 to June 1998 at Internet Services, Islandia, NY.

41. At Internet Services I created and developed business and marketing plans that fostered market and corporate growth.
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42. I was Marketing Manager from February 1994 to February 1998 at Sonikor Instrument Corporation, Copiague, NY.

43. At Sonikor Instrument Corporation I developed, managed, staffed and implemented marketing strategy, managed and negotiated contracts, maintained national and international industrial advertising campaigns.
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44. I was Marketing and Sales Manager from October 1992 to February 1994 at Altaire Pharmaceuticals, Inc., Holbrook, NY.

45. At Altaire Pharmaceuticals, Inc. I created and maintained customer, product and market data files.

46. At Altaire Pharmaceuticals, Inc. I maintained relationships with federal and state product reimbursement agencies, and retail and wholesale customers.

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47. I was Market Research Analyst from December 1991 to October 1992 at H.H.I., Inc. Taiwan, R.O.C. (Based in NY).
48. At H.H.I., Inc. I sourced industrial goods for export and analyzed domestic market for opportunities.

AFFILIATIONS

49. I am affiliated with the Harborfields School District Industry Advisory Board.
50. I am affiliated with the Smithtown School District Industry Advisory Board (E-Commerce Committee).
51. I am affiliated with the Long Island PC Users Group.
52. I am affiliated with the American Marketing Association

COMPUTER SKILLS

53. I am experienced with PC's and Macs.
54. I am experienced with DOS, Windows 95, 98, XP, and 2000.
55. I am experienced with numerous software packages, including and not limited to, Word, Excel, Access, PowerPoint, PageMaker, PhotoShop, FrontPage, other HTML editors, WebTrends for log analysis, WebPosition Gold for search engine optimization; PC trouble-shooting and maintenance, installing and configuring hardware and networking systems.

QUALIFICATIONS

56. From the above, I am qualified in computer networking, systems integration and troubleshooting, web and e-commerce development, traditional business models in the Internet environment, cryptography, SSL, HTML,

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client/server relationship, LAN, WAN, Intranet, and extranet networks, management of multiple web properties, internet marketing, broadband satellite and terrestrial delivery products, Web Caching, Web Hosting, corporate conferencing, live and on-demand Internet video and consumer level Internet video distribution products, Internet World, Streaming Media, DV Web Video, computer use, e-mail, and Internet research skills, URLs, multiple Internet properties, automotive website, WAP, opt-in email, affiliate networks, e-commerce, PCs, Macs, DOS, Windows 95, 98, XP, and 2000, numerous software packages, including and not limited to, Word, Excel, Access, PowerPoint, PageMaker, PhotoShop, FrontPage, other HTML editors, WebTrends for log analysis, and WebPosition Gold for search engine optimization, PC trouble-shooting and maintenance, installing, and configuring hardware and networking systems, and therefore qualified to distinguish between a WAN and the Internet.

INTERNET, WAN, AND LAN

57. A WAN (Wide Area Network) is a network which can be utilized over relatively long distances, quite often between buildings and some times transmitted over telephone lines or with a satellite transmission system. Protocol can be what ever is agreed upon. Some common protocols are: TCP/IP, NetBEUI, IPX/SPX-compatible Protocol, WAN support for ATM, ATM Call Manager, etc.
58. The Internet is the largest WAN of all and only permits TCP/IP protocol.
59. A LAN (Local Area Network) is a network which is generally used over shorter distances, quite often in a single building, it can be hard wired, wireless, infrared, etc. Protocol can be what ever is agreed upon.



Some common protocols are: TCP/IP, NetBEUI, Fast Infrared Protocol, etc.

CONCLUSION

- 60. The Internet is a WAN, but a WAN is not necessarily the Internet.
- 61. There is no reciprocity between a WAN and the Internet.

SECTION 1001 OF TITLE 18 OF THE UNITED STATES CODE

- 62. I hereby further declare and state that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or Imprisonment or both under *Section 1001 of Title 18 of the United States Code* and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2/20/04

Date

Gary J. Levanti
Gary J. Levanti

RECEIVED

MAR 05 2004

Technology Center 2100

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